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| EXAMINER |
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SCHATZ, CHRISTOPHER T

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| ART UNIT | PAPER NUMBER |
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1791

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|---------------------------------------|---|--|
| Office Action Summary | Application No. 10/522,473 | Applicant(s) KANNANKERIL ET AL. | |
| | Examiner CHRISTOPHER SCHATZ | Art Unit 1791 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/26/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 8 recites the limitation "wherein the release coating is a polyinfused coating." It is unclear to the examiner what the term "polyinfused" means. Neither the prior art, nor the specification reveal a definition of "polyinfused." Thus, it is not possible for the examiner to determine the scope of applicant's claim. For the purposes of examination, the examiner will assume that "polyinfused" means a polymer mixed with a metal.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 1-8 and 11-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chavannes (3142599) in view of Caputo (4576669).

Chavannes discloses a process for making an inflatable laminated article, comprising the steps of:

- (A) contacting a first film with a second film (see figure 1-4);
- (B) heating selected portions of at least one the first and second films to a temperature above a fusion temperature of the first and second films, so that the first and second films are heat sealed to one another to produce a laminated article having heat seal pattern which provides a plurality of inflatable chambers between the first film and the second film; wherein the first and second films are forwarded at a speed of at least 120 feet per minute while coming into contact with one another (column 3, lines 29-35), and wherein the heating is carried out by contacting the first film with a heated raised surface roller 10 (column 2, line 70 – column 5, line 45; figures 1-4).

Chavannes is silent as to a method wherein the raised surface roller comprises a release layer. However, such release layers are known in the art. For example, Caputo discloses a method for making an inflatable laminated article wherein a first film 20 is heat sealed to a second film 12 upon a raised surface roller 16, wherein said raised surface roller is coated with a polytetrafluoroethylene (PTFE) release layer in order to prevent the film from sticking to the roll (figure 1, column 3, line 36 – column 4, line 3;

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column 4, lines 31 – 52; column 6, lines 32 – 45). Therefore, at the time the invention was made, it would have been obvious to one of ordinary skill in the art to coat the raised surface roller of Chavannes with a PTFE release coating as taught by Caputo.

As to claim 2, it is recognized in the art that it is undesirable for the film to stick to the raised surface roller as disclosed by Caputo above. As such, one of ordinary skill in the art would have readily recognized the need to optimize the surface roughness of the roller in order to achieve optimal release characteristics and thus achieved a surface roughness within applicant's claimed range through routine experimentation. Absent any unexpected results presented by the applicant, the claimed surface roughness range does not patentably distinguish applicant's claimed method over the prior art.

As to claim 3, both Chavannes (figures 1-4; column 4, lines 8-23) and Caputo (figure 1, column 4, lines 17-42) disclose a method wherein the first and second films are heat sealed to one another under a combination of heat and pressure. As to claim 4, both Chavannes (figures 1-4; column 5, lines 30-37) and Caputo (figure 1; column 4, lines 17-42) disclose a method wherein the pressure is produced by means for forming a nip area. As to claim 5, both Chavannes (figures 1-4; column 4, lines 8-23) and Caputo (figure 1; column 4, lines 17-42) disclose a method wherein the first film is brought into contact with the raised surface roller and heated to the fusion temperature before passing through the nip area. As to claim 6, both Chavannes (figures 1-4; column 4, lines 8-23) and Caputo (figure 1; column 4, lines 17-42) disclose a method wherein the means for forming a nip area is a contact roller in a nip relationship with the raised surface roller. As to claims 7 and 8, Caputo discloses a method wherein the contact

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roller has an elastic outer coating comprising rubber (column 4, lines 17-30). Caputo meets the limitations of claim 8 as discussed above. As to claim 11, Caputo discloses a method wherein the edges of the raised surface roller have a radius of curvature within applicant's claimed range (column 4, lines 4-7). Caputo further discloses that the radius of curvature is a matter of preferences, and thus the examiner asserts that one of ordinary skill in the art would have readily achieved a radius of curvature within applicant's claimed range through routine experimentation. As to claims 12 and 13, both Chavannes (column 5, lines 44-46) and Caputo (figures 1-4; column 4, lines 40-42) disclose a method further comprising cooling the first and second films after heating the selected portions of the films, the cooling being carried out by a means for cooling wherein said means comprises a roller. As to claim 14, the required hardness of the cooling roller is dependent upon several manufacturing conditions, and the examiner asserts that one of ordinary skill in the art would have readily achieved applicant's claimed Shore A hardness range through routine experimentation. Absent any unexpected results presented by the applicant, the claimed Shore hardness range does not patentably distinguish applicants claimed method from the prior art. As to claims 15 and 16, Caputo discloses a PTFE release coating on the cooling roller (column 5, lines 32-45). As to claims 17 and 19, Chavannes discloses that the first and second films can be extruded or preformed (column 6, lines 1-4). While Chavannes is silent as to providing the preformed films from rollstock, one of ordinary skill in the art in possession of both Chavannes and Caputo would have readily recognized to provide the preformed films of Chavannes from rollstock. Therefore, at the time the invention was made, it

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would have been obvious to one of ordinary skill in the art to provide preformed films of Chavannes from rollstock as is known in the art and taught by Caputo. As to claim 18, Caputo discloses that both the first and second films can be made of a material having a Vicat softening point such as polyethylene (column 2, line 46) and further discloses that the films are softened above the softening point before being brought into contact with each other (column 2, line 14-28).

6. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chavannes and Caputo, as applied to claim 1 above, and further in view of Habenicht et al. (US 5387172).

Chavannes and Caputo disclose a method as discussed above in claim 1 above, but the references are silent as to a method wherein the release coating is a polyinfused coating. Habenicht discloses a roller that can be used for guiding films (column 1, lines 3-7), and further discloses that said roller can be metal (column 4, lines 47-49).

Habenicht discloses a polyinfused coating on said roller that said polyinfused coating provides excellent wear resistance for the roller (column 2, line 21 - column 3, line 19).

Therefore, at the time the invention was made, it would have been obvious to one of ordinary skill in the art to use a polyinfused release coating as taught by Habenicht in the method of Chavannes as modified by Caputo.

As to claim 10, Caputo discloses a PTFE release coating.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

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unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-16 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 7-15, 19-21 and 24-28 of U.S. Patent No. 6,800,162. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the conflicting patent contain all of the limitations of the above rejected claims in the instant application.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER SCHATZ whose telephone number is 571-272-6038. The examiner can normally be reached on Monday through Friday 9 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHRISTOPHER SCHATZ/
Examiner, Art Unit 1791

/Richard Crispino/
Supervisory Patent Examiner, Art Unit 1791